

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

BOBBY DARBY  
Plaintiff

V.

NO. 1:96CV214-B-A

NORTH MISSISSIPPI RURAL  
LEGAL SERVICES, INC.  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the defendant's motion for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

**FACTS**

The plaintiff is an attorney with North Mississippi Rural Legal Services ("NMRLS"), stationed in the defendant's West Point, Mississippi, office. The plaintiff is blind, and therefore, the defendant has, in the past, provided the plaintiff with a paralegal to assist him in such areas as research and transportation. In 1995, the defendant took the plaintiff's paralegal away, due to drastic cuts in the defendant's budget.

The plaintiff has filed suit for failure to make reasonable accommodations for him in accordance with the terms of the Americans with Disabilities Act ("ADA"). The defendant has moved for summary judgment on the grounds that the Collective Bargaining

Agreement applicable to attorneys with NMRLS<sup>1</sup> sets forth a mandatory grievance procedure, including binding arbitration, for all employment disputes. The defendant asserts that the plaintiff has failed to follow the grievance procedure contained within the CBA.

#### **LAW**

In Alexander v. Gardner-Denver Co., 415 U.S. 36, 39 L. Ed. 2d 147 (1974), the United States Supreme Court faced the issue of whether an employee's right to trial de novo under Title VII could be foreclosed by prior submission of his claim to final arbitration under a non-discrimination clause found in a collective bargaining agreement. The Court held that despite having submitted his employment discrimination claim to "binding" arbitration, the employee could file suit for employment discrimination under Title VII. Alexander, 415 U.S. at 47-60, 39 L. Ed. 2d at 157-165. In so holding, the Court distinguished the contractual rights afforded by the CBA from the statutory rights conferred by Congress through enactment of Title VII. Alexander, 415 U.S. at 49-50, 114 L. Ed. 2d at 159. The Court noted that the two rights are separate, and therefore any decision of the arbitrator through the grievance

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<sup>1</sup> Most of the attorneys and other employees of NMRLS are unionized, although the plaintiff states that he is not a member of the union, and therefore the CBA does not apply to this employment dispute. For purposes of this motion, it makes no difference whether or not the plaintiff is a member of the union, because, as set forth below, the court finds that the grievance procedures contained within the CBA do not apply.

procedure of the CBA could only affect the employee's contractual rights. The Court further noted that there can be no prospective waiver of an employee's rights under Title VII. Alexander, 415 U.S. at 51-52, 39 L. Ed. 2d at 160. While a union may waive certain statutory rights as to collective activity, such as an employee's right to strike, a union may not, through the collective bargaining process, waive an employee's statutory right to file suit for employment discrimination. Id. Therefore, the employee's resort to an arbitral forum does not constitute a valid waiver of the rights afforded by Title VII. Id. The employee may seek arbitration to vindicate his contractual rights conferred through the CBA, while also utilizing the judicial system to protect his statutory rights set forth in Title VII and other anti-discrimination statutes. Alexander, 415 U.S. at 52, 59-60, 114 L. Ed. 2d at 160, 164-165.

Several years after Alexander, the United States Supreme Court addressed the issue of whether a claim under the Age Discrimination in Employment Act could be subjected to compulsory arbitration pursuant to an agreement in a securities registration application. In Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 114 L. Ed. 2d 26 (1991), the plaintiff was employed as a manager of financial services by Interstate/Johnson Lane Corporation. As a condition of his employment, the plaintiff was required to register as a securities representative with several stock exchanges, including the New York Stock Exchange ("NYSE"). The registration application

required that the plaintiff "agree to arbitrate any dispute" arising between the plaintiff and his employer "that is required to be arbitrated under the rules" of the organizations with which the plaintiff registered. The NYSE rules provided for arbitration of any dispute arising out of the termination of employment. When the plaintiff was subsequently fired, he filed suit for age discrimination. The employer filed a motion to compel arbitration.

Upon appellate review, the Court held that Gilmer could be subjected to compulsory arbitration in accordance with the agreement set forth in the securities registration application. Gilmer, 500 U.S. at 26, 114 L. Ed. 2d at 37. The Court distinguished the Alexander line of cases in that Alexander and its progeny did not involve the enforceability of an agreement to arbitrate, but rather whether arbitration of contract-based claims precluded judicial resolution of statutory claims. Gilmer, 500 U.S. at 33-35, 114 L. Ed. 2d at 42-43. The Court noted that in the Alexander line of cases, the arbitration agreements were contained within a collective bargaining agreement, which raised concerns of the tension between collective representation and individual statutory rights. Id. Gilmer, on the other hand, involved an employee who had signed an individual agreement waiving his right to file suit for violation of his statutory rights. Id.

The issue presented to this court is whether an employee must exhaust the grievance procedures contained within a CBA, including an arbitration clause, before filing suit for violation of the ADA.

In accordance with the principles set forth in Alexander, the court finds that the plaintiff need not arbitrate his discrimination claims prior to filing suit. Arbitration could only resolve a dispute concerning the plaintiff's contractual rights, and would not preclude the plaintiff from subsequently filing suit for violation of the statutory rights conferred through the ADA. The contractual rights afforded by the CBA are wholly separate and independent from those statutory rights given to citizens by virtue of the ADA, though in many instances, a CBA may provide for a similar set of non-discriminatory rights. As stated in Alexander, an individual's statutory rights to non-discrimination may not be prospectively waived by inclusion of an arbitration clause in a CBA. Alexander, 415 U.S. at 51-52, 39 L. Ed. 2d at 160. Gilmer is inapplicable, since it involved an arbitration clause in an individual employment contract, as opposed to an arbitration clause contained within a CBA. The Supreme Court went to great lengths in Gilmer to contrast the differences between CBAs and individual employment contracts. Several other district courts, when faced with the identical issue presented here, have likewise reached the conclusion that an employee need not pursue grievance procedures set forth in a CBA prior to filing suit for discrimination under statutory schemes such as the ADA. See Bush v. Carrier Air Conditioning, 940 F. Supp. 1040 (E.D. Tex. 1996); DiPuccio v. United Parcel Serv., 890 F. Supp. 688 (N.D. Ohio 1995); Randolph v.

Cooper Indus., 879 F. Supp. 518 (W.D. Pa. 1994); Block v. Art Iron, Inc., 866 F. Supp. 380 (N.D. Ind. 1994).

**CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion for summary judgment on the grounds considered in this motion should be denied. An order will issue accordingly.

THIS, the \_\_\_\_\_ day of February, 1997.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE